

Planning Report

Thursday, January 28, 2016

5051 Brand Road Determination - Administrative Appeal

Case Summary

Agenda Number	1
Case Number	15-081AA
Proposal	An appeal to a decision by the Architectural Review Board to disapprove a request for demolition of a historic structure located outside the Historic District on the south side of Brand Road between Coffman Road and Wellington Reserve Court.
Request	Administrative Appeal Review and approval of an administrative appeal under the provisions of Zoning Code Sections 153.180 and 153.231.
Applicants	Thaddeus and Jessica Kittrell; represented by William Loveland, Attorney at Law.
Planning Contact	Jennifer Rauch, AICP, Planning Manager
Contact Information	(614) 410-4690, jrauch@dublin.oh.us
Planning Recommendation	Planning recommends the Board of Zoning Appeals affirm the Architectural Review Board's determination to disapprove the request for demolition.

Facts	
Site	5051 Brand Road
Site Features	<ul style="list-style-type: none"> • Single-family home constructed in 1880, set back approximately 260 feet from Brand Road. • A detached barn located behind the house was constructed in 1930. • House and outbuilding are at the higher elevations with a grade change of approximately 30 feet sloping north to south. • Several stands of trees are located throughout the property. • A creek is located along the southern boundary of the site.
Historical Background	<p>The two-story, Italianate single-family home was built in 1880. The owner was J.C. Thompson who was identified as the first master of the Masonic Lodge in the area. J.C. Thompson was the owner of the property purchased by the Wyandot Club to permit in 1889 a granite monument to be placed on the site as they believed the site to have been the location of Chief Leather Lips' execution. The home was placed on the Ohio Historic Inventory in August of 1975 and the National Register of Historic Places in April of 1979.</p> <p>The site is outside of the Historic District, but within the Architectural Review District boundaries, therefore, proposed demolition of the structure required review and approval by the Architectural Review Board.</p>
Case History	<p>August 4, 2015 The Architectural Review Board reviewed and disapproved the request for demolition and found all four review criteria were not met.</p> <p>August 21, 2015 The applicant filed the present Administrative Appeal regarding the Architectural Review Board's decision.</p>

Details	Administrative Appeal
Process	<p>Zoning Code Sections 153.180 and 153.231(C)(1) allows the Board of Zoning Appeals to review Administrative Appeals from any person or any governmental department affected or aggrieved, or to review any order, requirement, decision or determination where it is alleged by the appellant that there is error or misinterpretation in the administration of the Code. The Board may affirm, deny or modify a decision or determination rendered by the Architectural Review Board.</p>

Details	Administrative Appeal
Appeal Procedures	<p>In deciding the appeal, the Board is to determine whether or not the decision that was made was done so using the proper requirements and standards in this Code. The Board is limited to the information that was available to the administrative official or body who made the decision being appealed. Additional testimony is not appropriate. Per discussion between the parties, each attorney will present materials to the Board at the meeting.</p> <p>If after a determination that the administrative official or body making the decision did so improperly, the Board may reverse or affirm, wholly or partly, or may modify, the order, requirement, decision or determination appealed from, and may make an order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the administrative official or body from whom the appeal was taken.</p>
Applicable Zoning Requirements	<p>Section 153.176 Demolition.</p> <p>"In cases where an applicant applies for a Board Order to demolish a structure within the Architectural Review District, the application may be approved when the applicant is able to demonstrate economic hardship or unusual and compelling circumstances, or at least two of the following conditions prevail:</p> <ol style="list-style-type: none"> 1) The structure contains no features of architectural and historic significance to the character of the area in which it is located. 2) There is no reasonable economic use for the structure as it exists or as it might be restored, and that there exists no feasible and prudent alternative to demolition. 3) Deterioration has progressed to the point where it is not economically feasible to restore the structure and such neglect has not been willful. 4) The location of the structure impedes the orderly development, substantially interferes with the purpose of the District, or detracts from the historical character of its immediate vicinity; or, the proposed construction to replace the demolition significantly improves the overall quality of the Architectural Review District without diminishing the historic value of the vicinity or the District."
Administrative Appeal	<p>The applicants filed for an administrative appeal based on the following:</p> <ol style="list-style-type: none"> 1) The decision to deny the application was not supported by competent evidence. 2) The Architectural Review Board failed to give proper weight to expert evidence.

Details	Administrative Appeal
	<ol style="list-style-type: none"> 3) The decision is unsupported because the Architectural Review Board did not consider all of the factors required, including the provisions related to economic hardship, reasonable economic use of the structure, and cost of restoration. 4) The decision is outside the jurisdiction of the Architectural Review Board. 5) The decision represents a taking of property without compensation. 6) The decision is unconstitutional because the regulations, decision and process violate the Applicant's due process and equal protection rights. 7) The provisions of Chapter 153 as applied the property and application are unconstitutional.

Analysis	Administrative Appeal
Basis of Decision	<p>Code Section 153.170 provides that the Architectural Review District applies to properties in the original Village of Dublin and vicinity as identified on Appendix F, as well as other outlying, historic properties specified in Appendix G. The 5051 Brand Road site is located outside of the Historic District, but is identified on Appendix G, which means the demolition of the structure requires review and approval by the Architectural Review Board. The Architectural Review Board reviewed and denied the request at a public meeting held on August 4, 2015.</p> <p>Per Code, the request for demolition may be approved when the applicant is able to demonstrate economic hardship or unusual and compelling circumstances, OR at least two of the four demolition criteria are met. The applicant's request for demolition was based on a review of the four demolition criteria outlined in Zoning Code Section 153.176 (see Applicable Zoning Requirements section above). The material reviewed by staff and the Architectural Review Board was based on submitted materials to address these four criteria. A review and determination of economic hardship or unusual and compelling circumstances was not part of the applicant's request nor did the applicant provide the required information for review as outlined in Zoning Code Section 153.177.</p> <p>The Code places the burden on the applicant to demonstrate that the criteria for demolition are met. The applicant provided information to address the criteria, which was reviewed by staff and the Architectural Review Board. The recommendation made by staff to the Board stated all four criteria were not met (see attached ARB Planning Report for</p>

	analysis).The Architectural Review Board reviewed the applicant's submission material, reviewed the report and recommendation made by staff, and heard testimony from the applicant and the applicant's representatives and the public at the meeting. The Board's determination upon reviewing the information was to uphold the staff recommendation of disapproval of the demolition request, finding all four review criteria were not met.
Summary	The Architectural Review Board conducted a review and determination of the request in accordance with the Zoning Code. The information and documentation provided by the applicant focused on the four review criteria required for a demolition request, which was reviewed by the Architectural Review Board. The Board concurred with staff that the review criteria were not met and the request was denied.

<div>Recommendation</div> <div>Administrative Appeal</div>	
Affirm ARB's Decision	Planning recommends the Board of Zoning Appeals affirm the Architectural Review Board's determination to disapprove the request for demolition.

ADMINISTRATIVE APPEALS

The City of Dublin Zoning Ordinance stipulates that the Board of Zoning Appeals may hear appeals to any administrative decision rendered by the City in the review, interpretation and enforcement of the Zoning Code. The authority of the Board and the appeal process are outlined in Sections 153.231(C)(1) and 153.235(F).

153.235 (F) Administrative Appeal to the Board of Zoning Appeals

(F) Administrative Appeal to the Board of Zoning Appeals

- (1) An appeal may be taken from any person or any governmental department affected or aggrieved, and review any order, requirement, decision or determination where it is alleged by the appellant that there is error or misinterpretation in any order, requirement, decision, grant or refusal made by an administrative official or body charged with the enforcement and administration of this Code.
- (2) Appeals shall be taken within 20 days after the decision by filing with the officer from whom the appeal is taken and with the Board of Zoning Appeals, a notice of appeal, specifying the grounds. The officer from whom the appeal is taken shall transmit to the Board of Zoning Appeals all the papers constituting the record upon which the action was taken.
- (3) An appeal shall stay all proceedings in furtherance of the action appealed from unless the Director of Land Use and Long Range Planning certifies to the Board, after notice of appeal has been filed, that, due to the facts stated in the certificate, a stay would cause imminent peril to life or property. In this case, the proceedings shall not be stayed other than by a restraining order, which may be granted by a court of record.
- (4) In deciding the appeal, the Board shall determine whether or not the decision that was made was done so using the proper requirements and standards in this Code. The decision of the Board is limited to the information that was available to the administrative official or body who made the decision being appealed. Additional testimony is not appropriate.
- (5) After a determination that the administrative official or body making the decision did so improperly, the Board may reverse or affirm, wholly or partly, or may modify, the order, requirement, decision or determination appealed from, and may make an order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the administrative official or body from whom the appeal was taken.